UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,858	12/29/2000	Susan R. Santos	30644	8518

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ART UNIT	PAPER NUMBER
3623	

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Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/751,858	SANTOS ET AL.
	Examiner	Art Unit	
	Susanna M. Diaz	3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>22 February 2005</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-27* is/are pending in the application.

    4a) Of the above claim(s) <u>22-26</u> is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set

forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this

application is eligible for continued examination under 37 CFR 1.114, and the fee set

forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on

February 22, 2005 has been entered.

Claims 1, 7, 12, and 17 have been amended.

Claims 22-27 have been added; however, claims 22-26 are directed toward a

new invention and therefore stand as non-elected claims for the reasons discussed

below.

Claims 1-21 and 27 are presented for examination.

2.   Newly submitted claims 22-26 are directed to an invention that is independent or

distinct from the invention originally claimed for the following reasons: Claims 22-26 are

directed toward the details of determining elapsed time control limits. While claims 1-21

and 27 recite the determination of an elapsed time between consecutive events (similar

to claims 22-26), there is no recitation of an elapsed time control limit nor the details of

how such limit is determined. Therefore, claims 1-21 and 27 are related to claims 22-26

as a combination-subcombination, respectively.

Since applicant has received an action on the merits for the originally presented

invention, this invention has been constructively elected by original presentation for

prosecution on the merits. Accordingly, claims 22-26 are withdrawn from consideration

as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP §

821.03.

Response to Arguments

3.   Applicant's arguments filed February 22, 2005 have been fully considered but

they are not persuasive.

Applicant argues the claims as amended, which will be addressed in the revised

art rejection found below.

Claim Rejections - 35 USC § 112

4.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

5.   Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being

indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention.

Code segment needs to be tied into the system (i.e., executed by a computer or

other structural system element) in order to be given patentable weight in a system

claim. The code segment recited in lines 7-11 of independent claim 1 is not properly

integrated with the structural elements of the system.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

6.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

7.   Claims 1-21 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Jensen (U.S. Patent No. 6,065,000) in view of Pfeiffer ("Safety Plan Nets Results

at Teksid").

Jensen discloses a system for facilitating statistical analysis of events, the

system comprising:

[Claim 1]   a first input device operable to receive raw data regarding the events,

including the nature, place, time, and date of each event, and convert the raw data into

formatted data having a suitable electronic format (col. 3, lines 12-15; cols. 9-10, Table

5 (see at least # 20, 22, 29-33, 38); cols. 11-12, Table 6; col. 13, lines 1-12);

a memory storage device operable to store the formatted data (col. 12, line 65

through col. 13, line 14);

a code segment operable to perform date gap analysis and control chart analysis

on the formatted data to produce an analysis output (Figs. 5-8, 10, 15, 22, 69, 70 --

Accidents may be graphed or charted based on frequency by day of week, time of day,

and over a given period of time, such as a month, year, or specified date range; Figs.

31, 42, 43 -- An assessment of appropriate corrective actions to be taken can be recorded and displayed as an analysis output);

a display device operable to display the analysis output (Figs. 31, 42, 43 -- An assessment of appropriate corrective actions to be taken can be recorded and displayed as an analysis output); and

a second input device operable to allow a user to request a more specific analysis of at least one identified event, with the identified event being user-selected from the display (Fig. 43; col. 3, lines 12-15; col. 13, lines 1-12 -- A user may access additional information regarding a particular incident. For example, Fig. 43 shows a "Performance Analysis" section that summarizes accidents associated with a given individual. "Advanced Investigation," i.e., further analysis, may also be requested);

[Claim 3]   the events involving employee illness and injury (cols. 9-10, Table 5; cols. 11-12, Table 6; col. 13, lines 1-12);

[Claim 4]   the analysis output being displayed in a chart format (Figs. 31, 42, 43 -- An assessment of appropriate corrective actions to be taken can be recorded and displayed as an analysis output. The specific corrective action entered is displayed in the row labeled "Corrective Action"; therefore, this display of data is a type of mini chart);

[Claim 6]   the second input device being selected from the group consisting of: computer mice, trackballs, light pens, touch sensitive screens, keyboards (col. 3, lines 12-15; col. 13, lines 1-12).

As per claim 1, Jensen provides various examples of date gap analysis and control chart analysis. Jensen also allows information regarding corrective actions responsive to workplace incidents to be recorded and displayed; however, Jensen does not expressly teach that a code segment makes workload adjustments based on these analyses. Official Notice is taken that it is old and well-known in the art of workplace management to adjust workloads accordingly in response to dangerous working conditions. For example, an increase in the frequency of accidents and/or dangerous work-related decisions being made by overworked doctors, nurses, truck drivers, etc. have led safety proponents in each respective industry to push for a lower limit on the number of consecutive hours an employee may work. This is an example of a workload adjustment being made in response to analysis of workplace-related injury and accident statistics. Similarly, Jensen is directed toward analysis of workplace-related injury and accident statistics in order to better monitor these incidents for accurate reporting to safety governing bodies, such as OSHA (abstract); therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Jensen to generate corrective actions involving workload adjustments in order to extend the usefulness of Jensen's invention to industries where many workers are negatively affected by poor workload conditions, thereby making Jensen's invention more versatile, comprehensive, and effective in its ability to promote safer working environments. Furthermore, the Examiner asserts that the computer automation of a well-known manual process is old and well-known in the art. Computer automation of a well-known manual process facilitates more rapid, efficient, and

accurate performance of the process in comparison to the same process performed

entirely by hand. Therefore, the Examiner asserts that it would have been obvious to

one of ordinary skill in the art at the time of Applicant's invention to modify Jensen's

computer system code segment to make the workload adjustments based on date gap

analysis and control chart analysis in order to facilitate more rapid, efficient, and

accurate performance of the workload adjustments as opposed to if they were

performed entirely by hand.

Furthermore, as per claim 1, Jensen does not expressly disclose that its

computer-executed date gap analysis includes determining an elapsed time between

consecutive events, and wherein the output includes a value for each elapsed time.

However, looking at Jensen's graphs, it is clear that accidents may be graphed or

charted based on frequency by day of week, time of day, and over a given period of

time, such as a month, year, or specified date range (Figs. 5-8, 10, 15, 22, 69, 70). For

example, Fig. 8 lists specific events and corresponding dates of occurrence. Figs. 69

and 70 allow a user to view accident reports based on the frequency by day of the week

or frequency by time of the day. Fig. 8 even isolates specific events and identifies the

date of occurrence, thereby lending itself to an understanding of the lapse of time

between the specific events. Pfeiffer discusses Teksid Aluminum Foundry Inc.'s Safety

and Health Program that has been implemented to reduce incident rates (¶ 1). This

program serves as a model to improving work safety, especially in light of the goals of

OSHA (¶ 12). As part of this program, Teksid Aluminum Foundry Inc. "displays

recordable incidents per month and days since the last lost time incident throughout the

plant" (¶ 12). Both Jensen and Pfeiffer are directed toward improving workplace safety,

especially in light of OSHA requirements. Furthermore, as discussed above, Jensen

automates the collection of data needed to calculate lapse of time between specific

events; therefore, the Examiner asserts that it would have been obvious to one of

ordinary skill in the art to modify Jensen to determine an elapsed time between

consecutive events, wherein the output includes a value for each elapsed time in order

to facilitate implementation of a safety program that alerts workers to the days that have

passed since the last incident in order to provide these workers with a concrete goal to

surpass in an effort to improve workplace safety, as suggested by Pfeiffer. Additionally,

Official Notice is taken that it is old and well-known in the art to utilize a computer to

automatically perform a well-known calculation in order to more rapidly complete the

calculation while reducing errors commonly introduced by human intervention.

Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill

in the art at the time of Applicant's invention to utilize a computer, programmed with the

proper code segments, to perform this step of determining an elapsed time between

consecutive events, wherein the output includes a value for each elapsed time in order

to more rapidly complete the calculation while reducing errors commonly introduced by

human intervention.

Regarding claim 2, Jensen's system receives accident reports as users enter

them, which may or may not be daily. Accident reports are only entered when accidents

occurs; therefore, if accidents did not occur daily, then reports would likely not be

entered daily. On the other, the Examiner asserts that it would have been obvious to

one of ordinary skill in the art at the time of Applicant's invention for Jensen's input

device to receive data on a daily basis in order to maintain an accurate and updated

account of incidents, especially at a location(s) where reportable incidents occur on a

daily basis.

As per claim 5, Jensen displays analysis output in a graphical format, such as a

chart format; however, Jensen does not expressly teach that the analysis output may be

displayed in a tabular format. Official Notice is taken that it is old and well-known in the

art to display data in a tabular form in order to meet the needs of users who prefer their

reported data organized and selectable by tabs. Therefore, the Examiner asserts that it

would have been obvious to one of ordinary skill in the art at the time of Applicant's

invention to provide Jensen's users with the option of having the analysis output

displayed in a tabular format in order to meet the needs of users who prefer their

reported data organized and selectable by tabs.

[Claims 7-11]   Claims 7-11 recite limitations already addressed by the rejection of

claims 1-6 above; therefore, the same rejection applies.

Furthermore, as per claim 9, the fact that Jensen can filter and sort data by date,

incident types, etc. is indicative of the fact that Jensen's invention inherently comprises

code segment for separating data into a plurality of data sets based upon a

predetermined separation criteria.

[Claims 12-16, 27]   Claims 12-16 and 27 recite limitations already addressed by the rejection of claims 1-11 above; therefore, the same rejection applies.

Additionally, in reference to claim 27, the rejection of claim 1 states, "Official Notice is taken that it is old and well-known in the art of workplace management to adjust workloads accordingly in response to dangerous working conditions. For example, an increase in the frequency of accidents and/or dangerous work-related decisions being made by overworked doctors, nurses, truck drivers, etc. have led safety proponents in each respective industry to push for a lower limit on the number of consecutive hours an employee may work. This is an example of a workload adjustment being made in response to analysis of workplace-related injury and accident statistics." The Examiner submits that "correlating a number of events with a number of working employees to determine if the number of events is proportional with the number of working employees" (claim 27) is an old and well-known approach to making workload adjustments. Continuing with the aforementioned examples, if doctors, nurses, truck drivers, etc. are determined to be overworked based on the frequency of accidents, or events, then it is common practice to limit the hours consecutively worked by these types of workers. However, this limit requires that a larger number of employees be assigned to work overall in order to cover the needed shifts, hours, distances, etc. Therefore, using the same line of reasoning that is presented above in the rejection of claim 1, the Examiner asserts that it also would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Jensen to correlate a number of events with a number of working employees to determine if the

number of events is proportional with the number of working employees (claim 27) in

order to extend the usefulness of Jensen's invention to industries where many workers

are negatively affected by poor workload conditions, thereby making Jensen's invention

more versatile, comprehensive, and effective in its ability to promote safer working

environments.

[Claims 17-21]   Claims 17-21 recite limitations already addressed by the rejection

of claims 1-11 above; therefore, the same rejection applies.

Furthermore, as per claim 21, Jensen discloses that different data sets may be

analyzed and displayed in resulting charts. For example, Fig. 43 displays a mini chart

corresponding to "Accident History," another mini chart corresponding to "Performance

Analysis," another one showing "Corrective Action Assigned to," etc. All of these mini

charts are displayed simultaneously and are representative of different data sets.

Conclusion

8.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Susanna M. Diaz whose telephone number is (571) 272-

6733. The examiner can normally be reached on Monday-Friday, 10 am - 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for

the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

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you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

Susanna M. Diaz
Primary Examiner
Art Unit 3623

April 16, 2005